IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 8517 of 2004

Between:

M/s.Torsion Products Limited, Uppal Road, Hyderabad-500 007, represented by its Director (Operations)-Mr.C.Satish Reddy,

S/o Sri Rambhupal Reddy

..... PETITIONER

AND

1 The Commissioner of Customs and Central Excise Hyderabad-II Commissionerate, L.B.Stadium Road, Basheer Bagh, Hyderabad-500 004.
2 The Deputy Commissioner of Customs, ICD, Sanathnagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction and more particularly one in the nature of writ of mandamus declaring the letter dt.C.No.S/26/Miasc.69/2003-Cus.Tech.dt.31-03-2004 issued by the 1st respondent as illegal, arbitrary, void ab initio and violative of the petitioner's fundamental right guaranteed by Articles 14 and 19(1) (g) of the Constitution of India and to set aside the same and to further direct the respondents to convert the free shipping bills into DEPB Shipping bills as requested by the petitioner vide his letter dt.19-06-2003 with all the consequential benefits.

Counsel for the Petitioner: M/S.MOHAN VINOD & ASSOCIATES

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (SC FOR CG)

The Court at the stage of admission made the following:

ORDER: (Per the Hon'ble Sri Justice Bilal Nazki)

Heard the learned counsel for the parties. With their consent, the writ petition is disposed of at this stage.

The petitioner made an application on 19-06-2003 for conversion of Free Shipping Bills into DEPB Shipping Bills in terms of Circular Nos.6/2003 dated 28-10-2003 and 40/2003 dated 12-05-2003. This application was not decided till 31-03-2004. By that time, another Circle had come into being, being No. No.04/2004 dated 16-01-2004. The Commissioner rejected the application on the strength of the Circular No.04/2004 dated 16-01-2004.

The counsel for petitioner has challenged the order mainly on two grounds, that the Circular No.04/2004 issued on 16-01-2004 would not apply to the pending applications. The petitioner had exported knowing fully well the benefits which would accrue to him in terms of Circulars already issued at the time of export. The benefits available to him at the time of export would not be denied to him by retrospectively amending the earlier Circulars by issuing fresh Circulars. Secondly, he contended that even from the order of the Commissioner, it is not revealed as to why his application was rejected even on the strength of Circular No.04/2004 dated 16-01-2004. The Circular No.04/2004 dated 16-01-2004 does not bar conversion, but it allows conversion subject to conditions which are mentioned and reproduced herein below:

a. The request for conversion is made by the exporter within one month of the denial/rejection of the benefit claimed.

b. On the basis of available export documents etc., the fact of use of inputs is satisfactorily proved in the resultant export product.

c. The examination report and other endorsements made on the shipping bill/export documents prove the fact of export and the export product is clearly covered under relevant SION and or DEPB Schedule as the case may be.

d. On the basis of S/Bill/export documents the exporter is fulfilling all conditions of the Export Promotion Scheme into which he is seeking conversion.

e. The exporter has not availed benefit of the export promotion Scheme under which the goods were exported and no fraud/misdeclaration/manipulation/ investigation is initiated against him in respect of such exports.

The impugned order merely reproduces one of the paragraphs of the Circular and rejects the application of the petitioner.

After hearing the learned counsel for the respondents also, we are not sure as to what were the reasons for rejecting the claim, even if the Commissioner was of the opinion that Circular No.04/2004 would apply, even then, he had to consider the case of the petitioner for grant of conversion in terms of this Circular, which he has not done. The Rule of natural justice would also demand that the petitioner should have been heard particularly when the Commissioner was of the view that the petitioner was not entitled to conversion.

For these reasons, we set aside the order dated 31-03-2004. However, in the facts and circumstances of the case, we remand the case back to the Commissioner, who shall hear the petitioner on two

questions-

a. Whether Circular No.04/2004 dated 16-01-2004 would at all apply to the petitioner's case.

b. Even if Circular No.04/2004 dated 16-01-2004 applies to him, whether his application can be rejected, and if so, on what grounds.

The application shall be decided within a period of two months from the date of receipt of a copy of this order. No order as to costs.

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(BILAL NAZKI, J)

Date: 17-08-2004

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(S.ANANDA REDDY, J)

Note:

Office to furnish CC in one week.

(B/o)

GHN/AJR

To

1.]The Commissioner of Customs and Central Excise Hyderabad-II Commissionerate, L.B.Stadium Road, Basheer Bagh,

   Hyderabad-500 004.

2. The Deputy Commissioner of Customs, ICD, Sanathnagar, Hyderabad.

3. Two CD copies.